

REMARKS

This paper is responsive to the Office Action mailed July 17, 2007. Applicant requests reconsideration of the claims and allowance of the application in view of the foregoing amendments and the following remarks. No claims have been canceled or added. Accordingly, Claims 1-10 and 28-46 are pending in the application.

Claim Rejections – 35 U.S.C. § 112

Claims 1-10 and 28-46 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicant requests reconsideration. The claims are definite and meet the requirements of Section 112.

The Examiner requested clarification of the element of "causing an order to be simultaneously represented," as recited in Claim 1. In response, applicant notes that both the internal and external markets, as discussed in the present application, are operable to execute trades between a plurality of market participants. A market participant, using a software process on a computer, is able to post an order at a market, which order is then made available to other market participants for execution. The order is thus represented in the market and can be acted upon in accordance with the rules of engagement specified by the market. In an implementation of the present application where a portion or all of an order is simultaneously posted at multiple markets, a mirror "ELF" (electronic liquidity finder) program 50 is configured to synchronize the books at the multiple markets and ensure that the order is executed at most at one of the markets. The present application describes examples in which an order is simultaneously represented at multiple markets (order umpire 30 and external exchange 80) using a mirror ELF 50. See, e.g., page 11, lines 19-29, and more particularly page 22, line 19, to page 23, line 22, as well as page 25, line 13, to page 26, line 7, of the present application as filed.

Applicant submits that the claim terminology "causing an order to be simultaneously represented" is sufficiently clear to meet the requirements of 35 U.S.C. § 112. Nevertheless,

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without narrowing its scope, Claim 1 has been amended to recite "causing an order to be simultaneously *available for execution*." Furthermore, the recited element "wherein the same portion or all of the order is simultaneously represented in both the internal and external markets" has been rephrased, without narrowing the claim, to now read: "wherein the same portion or all of the order is simultaneously available for execution by market participants in both the internal and external markets." The feature of an order being simultaneously available for execution in both the internal and external markets is not ambiguous. Withdrawal of the rejection under 35 U.S.C. § 112 is requested.

Clarification was sought with respect to the term "facilitating an exchange" as recited in Claim 1. Applicant submits that this claim terminology is sufficiently clear, particularly in view of the description provided in the specification. For example, the Summary in the present application recites:

In accordance with an aspect of this invention, there is provided a method of facilitating trading. A set of trading processes is automatically supported, each trading process operating according to a respective trading methodology selected by a user of the trading process, each of the trading methodologies incorporating standards for using a trading platform. Orders are automatically routed from the set of trading processes to a plurality of markets in accordance with the respective trading methodologies.

Persons having ordinary skill in the art readily understand what it means to have markets that each have a plurality of market participants and separately facilitate an exchange between the market participants. Nevertheless, without narrowing its scope, Claim 1 has been amended to recite "the internal and external markets each have a plurality of market participants and *are separately capable of executing trades* between the market participants." Withdrawal of the rejection under 35 U.S.C. § 112 is requested.

Clarification was further sought with respect to the element of "ensuring the order is executable" as recited in Claim 1. This claim terminology is also sufficiently clear to meet the requirements of Section 112, particularly in view of the application as filed. See, e.g., page 25,

lines 13-23. Nevertheless, without narrowing its scope, Claim 1 has been amended to recite "automatically *controlling execution of the order such that* the order is executable by a market participant in at most one of the internal market and the external market without chance of a duplicate execution of the order in more than one of the internal and external markets."

While the Office Action did not indicate Claims 5, 32, and 42 in particular, the Examiner suggested that the element of "committing the conditional operation" is ambiguous. Applicant respectfully disagrees. An example of this element is explained in the present application: "The mirror ELF enables the order umpire and the exchange to maintain synchronization over a variety of operations, such as cancel, post, affirm and execute, via a protocol wherein the operation is conditionally performed at one market and the operation is committed after being reflected at the other market. The reflection may include canceling to allow one market to be in sole control of the order and therefore able to safely execute without chance of a duplicate execution." See page 25, lines 18-23. The commit operation is performed after receiving confirmation from the other of the internal and external markets that the operation has been communicated to the other of the internal and external markets.

In view of the foregoing, applicant submits that all of the claims are definite and meet the requirements of Section 112, second paragraph.

Claim Rejections – 35 U.S.C. § 103(a)

Claims 1-10 and 28-46 were rejected as being unpatentable over Lupien et al. (U.S. Patent No. 5,101,353) (hereinafter referred to as "Lupien") in view of Korhammer et al. (U.S. Patent No. 6,278,982) (hereinafter referred to as "Korhammer"). Applicant respectfully disagrees and requests withdrawal of the claim rejections.

With respect to independent Claims 1, 28, and 38, the Office Action asserts that Lupien discloses a method and a system in which an order is simultaneously represented in both an

internal market and an external market, citing the Abstract, Col. 3, lines 31-45, and Col. 4, lines 32-38 of Lupien. Applicant respectfully disagrees.

It is instructive to review the actual teaching of Lupien at Col. 3, lines 31-45, which reads as follows:

To the extent that the limits have not been reached, the present invention will issue buy and/or sell orders as a function thereof as well as the security's volatility, current price and recent price history. It will also take into consideration the closeness of the overall cash position to its limits as well as positions, offsetting or otherwise, already achieved in other stocks. The resulting orders will be broadcast to other market participants logged into the computer executing this program, or series of programs, the [sic - then] placed on one or more computerized exchanges, brokerage services, market access networks or displayed through its own network. The division of orders among those sources of executions will be based upon a series of rules including probability of execution and control of pending orders.

Lupien does not teach or suggest the element of "automatically causing a portion or all of an order to be *simultaneously available for execution* in both the internal market and an external market . . . wherein the same portion or all of the order is simultaneously available for execution by market participants in both the internal and external markets," as claimed in Claim 1. According to Lupien, orders are first broadcast to an internal market (i.e., "other market participants logged into the computer executing this program"). If the orders are not executed within the system, the orders may then be routed to an external market (i.e., "one or more computerized exchanges, brokerage services, market access networks or displayed through its own network"). The routing of orders in the internal and external markets is sequential. This is not surprising because Lupien teaches nothing about "automatically controlling execution of the order such that the order is executable by a market participant in at most one of the internal market and the external market without chance of a duplicate execution of the order in more than one of the internal and external markets." With the present application, an order benefits from wider, simultaneous market exposure and can be executed at one of the markets without the

problem (faced in the prior art) where the order is unintentionally or unexpectedly executed at *more than one* of the markets.

The fact that Lupien does not simultaneously make available for execution the same portion or all of an order in both an internal and external market is further borne out, for example, at Col. 16, lines 23-28, of Lupien. This passage (part of Claim 1 of Lupien) recites "transmitting orders remaining unexecuted after first being presented internally to other investors using the system to external automated securities brokers and exchanges for matching and execution in a substantially real time environment." Sequential representation of an order at different markets, as taught by Lupien, does not anticipate or render obvious a method or system in which a portion or all of an order is *simultaneously available for execution* in both an internal and external market and which *automatically controls execution* of the order, as claimed in Claim 1.

Since a *prima facie* case of obviousness under Section 103 requires that all elements of a claim be taught in the prior art, which is not shown with Lupien, the rejection of Claim 1 should be withdrawn.

The Office Action did not cite Korhammer with respect to Claim 1. Nonetheless, applicant has considered the Korhammer reference and finds that it does not overcome the deficiencies of Lupien noted above. This is not surprising because the rejection of Claim 1 based on Korhammer as set forth in the prior Office Action was withdrawn in the present Office Action.

Independent Claim 28 is directed to a system configured to operate an internal market. The system comprises a computing component programmed to make available for execution a portion or all of an order in the internal market and to automatically cause the same portion or all of the order to be simultaneously available for execution at an external market. The computing component is further configured to automatically control execution of the order such that the order is executable by a market participant in at most one of the internal market and the external

market without chance of a duplicate execution in more than one of the internal and external markets.

As is evident from the preceding discussion, Lupien does not disclose a programmed computing component configured as defined in Claim 28, nor does Korhammer overcome the deficiencies of Lupien. Accordingly, the rejection of Claim 28 should be withdrawn.

Independent Claim 38 is directed to a computer-accessible medium having executable instructions stored thereon for operating an internal market. When executed, the instructions cause a computer to receive an order that is executable at a market and automatically cause a portion or all of the order to be simultaneously available for execution in both the internal market and an external market. Each of the internal and external markets have a plurality of market participants and are separately capable of executing trades between the market participants. The same portion or all of the order is simultaneously available for execution by market participants in both the internal and external markets. Furthermore, the instructions, when executed, cause the computer to automatically control execution of the order such that the order is executable by a market participant in at most one of the internal market and the external market without chance of a duplicate execution in more than one of the internal and external markets.

Lupien does not teach the elements recited in Claim 38, particularly in view of the comments provided above relative to Claims 1 and 28, and Korhammer does not overcome the deficiencies of Lupien. Accordingly, Claim 38 should be allowed.

Dependent Claims 2-10, 29-37, 39-46 depend either directly or indirectly from Claims 1, 28, and 38, respectively, and are allowable over Lupien and Korhammer for the same reasons as Claims 1, 28, and 38. Moreover, Claims 2-10, 29-37, and 39-46 present subject matter that is separately and additionally allowable over Lupien and Korhammer. Claims 2, 5, 6, 9, and 10 have been amended, without narrowing the claims, for consistency with amended Claim 1. Similarly, Claims 29, 32, 33, 36, and 37 have been amended for consistency with amended

Claim 28, while Claims 39, 42, 43, and 46 have been amended for consistency with amended Claim 38.

Lastly, without conceding the propriety of the Official Notice taken by the Examiner, applicant respectfully submits that official notice of "executing orders in a market with short latencies" (Office Action, page 7) is insufficient to cure the deficiencies of Lupien and Korhammer and does not support an obviousness rejection of Claims 7-8, 34-35, and 44-45. Furthermore, Claims 7, 34, and 44 have been amended to overcome the Examiner's concern that the latter part of each of the claims represents merely "intended use." Examination of the full scope of Claims 7-8, 34-35, and 44-45 is requested.

CONCLUSION

Applicant requests further examination and allowance of Claims 1-10 and 28-46. Should any issues need resolution prior to allowance, the Examiner is invited to contact the undersigned counsel by telephone.

Respectfully submitted,

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